

**FLATHEAD COUNTY PLANNING BOARD  
MINUTES OF THE MEETING  
JUNE 20, 2007**

**CALL TO  
ORDER**

A meeting of the Flathead County Planning Board was called to order at approximately 6:00 p.m. Board members present were Gordon Cross, Kathy Robertson, Kim Fleming, Frank Dekort and Don Hines. Eric Giles, BJ Grieve, Kirsten Holland and Jeff Harris represented the Flathead County Planning & Zoning Office.

There were approximately 70 people in the audience.

**PUBLIC REVIEW**

Gordon Cross reviewed the public hearing process.

**APPROVAL OF  
MINUTES**

Fleming made a motion seconded by Robertson to approve the May 16, 2007 meeting minutes.

The motion was carried by quorum.

Cross abstained from voting.

**PUBLIC  
COMMENT  
(not related to  
agenda items)**

None.

**PRELIMINARY  
PLAT/  
SPURWING  
CREEKSIDE  
FPP-07-13**

A request by Shelby Nash-Hunter for Preliminary Plat approval of Spurwing Creekside, a forty-seven lot (thirty-five single-family and twelve townhomes) residential subdivision on 23.68 acres. Lots in the subdivision are proposed to have public water and sewer systems. The property is located off Bower Road in Lakeside.

**STAFF REPORT**

BJ Grieve reviewed Staff Report FPP 07-13 for the Board.

**BOARD  
QUESTIONS**

None.

**APPLICANT**

Charles Lapp is the developer for Spurwing Creekside Subdivision and the brother in law of the property owner. Jeff Larsen is the engineer of the project. Lapp presented a power point presentation. He had a pre-application meeting in December and worked with BJ through the whole process. When he came to the Planning Office it was decided to create a new subdivision instead of extending off of Spurwing. He showed pictures of Lakeside and how it has been developed over the years. The WYAM campus is across the creek from Spurwing

Creekside and most of the area is developed into single family houses so they decided to stick with that density. The housing density is two units per acre because Lakeside Water and Sewer is based on two units per acre. He worked with the DNRC to create a thinning plan for forest safety and said thinning is used to create space between canopies. Pruning is designed to reduce the ladder fuels on trees and trees should be pruned up to 15 feet high. When the site was purchased it was overgrown with tress and diseased underbrush and had a significant weed problem. Today the property has been thinned but has kept the natural wooded look. Spurwing and Spurwing Creekside are in the third year of a weed management plan with the Flathead County Weed Department. The County sprayed the property the first year, a private contractor sprayed the second year, and Lapp sprayed the third year. He showed pictures of diseased trees and underbrush. The DNRC said it was extremely diseased so he logged the property like the DNRC advised him to. He discussed fire wise communities and showed statistics on safety compared to his subdivision. He said the subdivision is non obtrusive to the surrounding natural beauty. The hiking trails will be maintained and there will be a neighborhood park with 3.74 acres set aside for passive recreation. He showed pictures of deer trails from the Creek to the meadow. There will be silt fence used any place where there might be drainage that could leak into the creek. All the driveways will have a 10% grade or less. He showed pictures of lots accessed from roads up above and said they will encourage natural stone. He said the road will be 29 feet wide with a 5 foot walking/bike path paved.

Cross asked about the “will serve” letter from Lakeside Water and Sewer.

Lapp said Lakeside Water and Sewer will service the subdivision when the time comes. He said the process is time consuming and they will serve the subdivision. Lakeside Water and Sewer has guaranteed service to at least four subdivisions that don’t even have preliminary plat approval. Until he has something to send to DEQ, Lakeside Water and Sewer won’t give them a “will serve” letter.

Cross asked if there was a moratorium in effect.

Lapp said the moratorium has been lifted for Spurwing, but not Spurwing Creekside and the moratorium is slowly getting lifted. Lakeside Water and Sewer wanted to avoid guaranteeing hookups for subdivisions without approval.

<b>AGENCIES</b>	None present.
<b>PUBLIC COMMENT</b>	None.
<b>STAFF REBUTTAL</b>	<p>Grieve said Staff is very satisfied with the Lakeside Water and Sewer situation. The applicant has provided services to the fire risk by reducing the fuels in the area. The applicants have been very cooperative and have gone above and beyond in meeting any issues that have come up along the way.</p> <p>Fleming asked about condition 14 and the parkland.</p> <p>Lapp said they did have a meeting with the County and what it boils down to is the County doesn't want a raw piece of land, but if he makes it into something nice then the County would be interested in taking over from there. He said the County can take over the park whenever they want to.</p> <p>Cross asked where the public access to the park was.</p> <p>Lapp showed a 15 foot wide path to the park.</p>
<b>APPLICANT REBUTTAL</b>	None.
<b>BOARD DISCUSSION</b>	None.
<b>MOTION TO ADOPT F.O.F.</b>	DeKort made a motion seconded by Robertson to adopt Staff Report FPP 07-13 as findings-of-fact.
<b>MOTION TO ADD F.O.F. 9</b>	Robertson made a motion seconded by DeKort to add finding of fact 9 to state: <i>On May 29, 2007 the Lakeside Community Council voted 5-0 to recommend approval of Spurwing Creekside to the Flathead County Planning Board.</i>
<b>ROLL CALL FOR F.O.F. 9</b>	On a roll call vote the motion passed unanimously.
<b>BOARD DISCUSSION</b>	None.
<b>ADOPT F.O.F. ROLL CALL</b>	On a roll call vote the motion passed unanimously.

**MOTION TO  
APPROVE**

Robertson made a motion seconded by DeKort to recommend approval of FPP 07-13 as amended to the County Commissioners.

**BOARD  
DISCUSSION**

Cross said condition 14 states the park can be used by all residents of the development but wants to know if it is open to the public.

Fleming said it is for the benefit of the homeowners.

Grieve said if the park goes to the County then it will be public and the County will have to take over the responsibility, but if the homeowners keep it they are liable. He said the biggest problem with County parks is that people trash them.

Robertson asked what the minimum and maximum lot size is.

Grieve said it is on the application form.

**MOTION TO  
ADD  
CONDITION 20**

Robertson made a motion seconded by DeKort to add condition 20 to state: *No further subdivision of any lot shall occur.*

**ROLL CALL**

On a roll call vote the motion passed unanimously.

**BOARD  
DISCUSSION**

Cross asked what the situation was for bike paths and the rest of the subdivision.

Lapp said the bike path goes all the way through the subdivision.

**ROLL CALL  
TO APPROVE**

On a roll call vote the motion passed unanimously.

**BOARD  
DISCUSSION**

None.

**ZONE  
DISTRICT/  
SPRING CREEK  
FZD-07-01**

A Zoning request to establish the Spring Creek Zoning District, by Robert and Peggy Hedin on behalf of citizens in the area. The area is currently unzoned and the proposal would establish R-1 (Suburban Residential) zoning along a portion of the western boundary of Highway 93 in Lakeside.

**STAFF REPORT**

Kirsten Holland reviewed Staff Report FZD 07-01 for the Board.

**BOARD  
QUESTIONS**

Cross asked about the supporting land owners.

Holland said anybody that is not highlighted in red on the map hasn't signed the petitions.

## **APPLICANT**

Lisa Borowitz, land use planner for applicants, introduced F&H land surveying, Roger Sullivan, Peggy Hedin, Bob Hedin, Andy Dye, and Rich Dukelow. Borowitz said the whole process started with an inventory of 66 parcels. 89% of the parcels were less than five acres in size. The applicants looked at the consistency with the Growth Policy and the character and infrastructure of the neighborhood.

Peggy Houdin, 206 West Ridge Drive, said 83% of the people are in approval. She left a picture packet with the Board so they could see the character of the neighborhood. The growth of Flathead Valley had come suddenly and the only way you can tell if something is going on in your neighborhood is if you see it in the newspaper. She saw a newspaper headline for 122 condos proposed in her area. She thought the land was going to be developed into homes, not condos. It would be tragic if a high density development would sweep up Spring Creek Road. She made a canvas of the area and asked if people would be interested in zoning. Around September she was ready to file the zoning application but had to wait until the Growth Policy was adopted. She said in the meantime the application for the 120 condo development was withdrawn from the Planning office so by the time the zone change application was filed there were no subdivision applications in the works. She said 44 out of 53 people in the area support the zoning district. The boundaries for zone change were chosen based on people in the area who share a common interest in the neighborhood. She agreed with Holland's staff report, but wanted to add vision 1 from the Growth Policy. She thinks the development would rob visitors of the view of Flathead River. She wanted vision 6, policy 21 and goal 8 from the Growth Policy added to the Staff Report. She hoped the Board would listen carefully tonight because R1 zoning is appropriate for the area.

Bob Hedin, 206 West Wood Drive, read input from a neighbor on the petition. He spoke as a resident of the area. He said the grades on Spring Creek were steep and it matches steep topography. There is a 11% grade at the landing that crosses with Highway 93. Springcreek has a substandard right of way of 40 feet and there are no improvements for industrial travel. Springcreek is the only access to Highway 93 for the residents. If there was an emergency Springcreek would be a bottleneck for residents and emergency vehicles getting in and out.

Andrew Guy, 115 Looking East Drive, is part of the Springcreek group and signed the application. He strongly asked the Board to support the application because it is a very rural area. He can look out his living room and see children walking down Springcreek in the winter time. The current density handles the children, school buses, etc, but an increase of higher density would open up consequences that aren't thoroughly understood. Unzoned areas such as Springcreek have no maximum building or height requirement and would leave it wide open for absent zoning and any type of construction. If an extreme fire occurred the current density would provide for evacuation and quick movement of emergency services, but increased density would not. He said R1 zoning would promote the health and general welfare of the public and urged the Board to recommend approval to the County Commissioners.

Richard Dukelow, 225 Spring Creek Road, spoke on the character of the neighborhood. In 1912 his grandfather acquired 138 acres in the area and ran a small farm. Dukelow lived there until 1955. He said there are an interesting group of people in the neighborhood. His grandfather would have neighbors come to the farm to pick up products at night and he was privy to interesting conversations his grandfather had. The people were very friendly and outgoing so 20 years ago he purchased 18 acres of property and built a house. The first thing he discovered was all the neighbors were very much like their ancestors. He has many great neighbors and 83% of them are interested in the zoning district.

**BOARD  
QUESTIONS**

None.

**AGENCIES**

None.

**PUBLIC  
COMMENT**

Virginia Gazewood, 105 Looking East Drive, passed a handout to the Board. She encouraged the Board to vote yes and establish R1 zoning. She showed aerial photos marking all the roads in the area and traffic congestion. She said the pictures are self explanatory.

Jim Clark, 128 Hilldale Drive, supports people's property rights. He thinks people have the right to a quality of life, retain property values, peace, safety and a return on their investments. The best way to adhere to the Growth Policy is zoning because it provides predictability, limits chaos, has references to density of housing, provides stability, a growth rate, density in area, type of

housing, size of dwelling units, expectations of getting projects, planning tool for service provider, stable growth rate, rules which area will grow, reduces County workload, stabilizes growth of areas and provides a plan for the future. He said many people have invested their life savings into homes in the area and without zoning it puts them in a bad situation. He wants to see a good balance achieved and thinks there can be a win-win situation for everyone.

Pattee O'brien, 215 Westridge Drive, overlooks 19 acres of open meadow land. As a community of rural neighbors they are beginning to realize how popular areas have become for high density development. R1 will give a measure of predictability and will maintain rural landscaping and remain a scenic beauty. It will ensure property rights for all property owners and alleviate concerns of residents regarding safety issues. She said all property owners need to have some stabilized expectations for the future so they can predict and plan for the future. R1 zoning determines community water resources, availability and capacity and also gives schools an idea when to expect an increase in the school population.

John Dipman, Kalispell, has a vested interest in the Springcreek neighborhood. In December of 2000 he purchased a four acre tract on West Ridge Drive with the intent that his daughter would eventually build a home when she retired from the Navy. When he purchased the property it met all the criteria he was looking for: location, beauty, and a view of Flathead Lake. A few years ago a five lot subdivision was proposed next to land he purchased. He knew some type of development was going to happen close to his land. During the past 29 years he has been involved in the appraisal of real estate in Flathead Valley and the high density development in Springcreek neighborhood would have an inverse impact on the view, traffic, rural setting and property value. He feels without zoning the neighborhood will be faced with many high density developments. He thinks Springcreek should continue to be a single family residential area.

Janet Contuy, Lakeside, is more affected than her neighbors because her property is adjacent to the property waiting to be developed. She said condos would completely obliterate any scenic views in the area. She owned her home before the Etzler's purchased their land. She thought the Etzler's plan was to develop five, one acre lots and planned on putting a road into the property by merging with the entrance to her property. She has

been residing in Lakeside in a house that is more accommodating for her needs. She said no one will buy her house because she can't prove what will happen on the lot next to her. She asked the Board to vote yes on R1 zoning. She submitted two photos to the Board.

Dennis Hatton, 249 Breezy Point, represents Somers Town Home Association, and they feel R1 zoning would be a positive step for the area.

Allison McCarthy, 551 North Juniper Bay Road, doesn't live in the zoning district but access Highway 93. She approves of the application for R1 zoning because 83% of the neighborhood shares the vision of what they want in Juniper Bay. She doesn't want a neighborhood of units because a residential area provides a slower, safer place to raise their children. Through last few years she has learned a lot about subdivision regulations, PUD overlays, and knows that approving zoning doesn't stop development. She thinks zoning will make development better and will protect the area from high density urban development. She said most importantly zoning will keep the neighborhood a neighborhood of homes, not units.

Bob Frasier, 375 North Juniper Bay, came to support the request for R1 zoning. He said most of his speech was given by the previous speaker. He wanted to reiterate that the people in the zoning district are not anti-growth and accept the fact there will be growth, but they want growth with rules. He said some of the major supporters of the zone change are governmental agencies. He pointed out the last paragraph of a letter from lakeside water and sewer. He urged the Board to vote yes for R1 zoning.

Sheila Winegard, 555 Spring Creek Road, lives above the zoning district and is in favor of R1 zoning. She thinks it will protect the neighborhood.

Dan Bangmen, 543 North Juniper Bay Road, said he can relate to everyone and would like to keep the area the way it is. He thinks R1 zoning will compliment the interim zoning Juniper Bay received.

Jere Jobe, 145 Looking East Drive, lives in single family residential home on 7 acres. He supports the R1 zoning and said there is no point to allow a peaceful place to becoming the next Lake Tahoe in Flathead Valley. He thinks everyone should have the right to use their property as they see fit. He knows every



property owner has made a substantial investment. He is worried that allowing bits and pieces to be developed haphazardly will diminish everyone's property values.

Bruce Jellison, 559 North Juniper Bay Road, supports the zoning. He is a former builder and thinks zoning areas were the best place to work because of the regulations. He had everyone in favor of the zoning raise their hand.

David Reynolds, 269 Bierney Creek Road, member of the Lakeside Community Council, doesn't like the way the application looked. He was first made aware of the proposal by Jim Etzler, then a couple of months later Peggy Hedin showed up at council meeting and advised the Council to take their concerns to the commissioners. In the meantime he spoke to Etzler a few times. The item showed up on the Council's agenda on May 29<sup>th</sup>, but the thing that bothers him is the Etzler's were not contacted about the zoning district. He read an email from the Etzler's about not being informed. He thinks the Etzler's were placed in a bull's eye zoning effort. He wants the Board to look at the paper trail and see what went wrong.

Kevin Sever, 140 Manaco Drive, lives approximately one mile South of the zoning area. He is an acquaintance of the Etzler's and thinks the zoning request is an attempt to undermine the Etzler's to prevent them from developing the single, largest property in the zoning district. The Etzler's own 19.6 acres. If the applicant was sincere and thought zoning was a process in obtaining good results then the Etzler's should have been informed. The secretive technique used was the only way Peggy Hedin could have the zoning request approved. If the proposed zone area was enlarged it could include other property owners that would tilt the vote. He said the applicant has nothing to lose other than time spent to obtain a favorable vote. He said 72% of the lots in the zoning area are already prohibited from any further subdivision so those owners wouldn't be affected. The only person suffering is the Etzler's. He stated the Etzler's purchased their parcel with no zoning and have done everything up front so they should be commended not punished.

Bev Etzler, 1600 Whalebone Drive, has lived in valley for over 27 years and has worked very hard to get ahead. She finally purchased the 19.5 acre parcel of land in the proposed district and purchased it as an investment for their retirement and children. She now has a group of people holding their investment in their hands and have more control of her property than she

does. She said the applicant's didn't pay for the land or help take down fences. She said if they want to control the land they should buy it. She discussed freedom of property rights the Americans fought for. She looked at the things hanging in the Planning Office and wants to know why they are there if they are not practiced. She wants to have her property rights like she deserves. She said the original plan was to create five lots and live on the remainder. She went to the Planning Office and met with a planner and was told to present everything up front which she did, but now the neighborhood has gained up against her. She requested her property be left out of the zoning district.

Joe Safagan, handed out a letter to the Board. He said the process is objectable because all the authorities were given one hour to speak but everyone else was given 3 minutes. He said all the people sitting in the audience would object if 83% of their neighbors wanted to change the value of their property, but they don't have a problem changing the value of someone's else's property. He said as long as the Etzler's meet the basic criteria for developing they should be allowed to use the property how they want to. He said uses are what give property value and taking those uses away ruins the property value. A certain percentage of people shouldn't have the right to control someone else's property. He said everyone in the area bought their property unzoned and now they want to maintain what they have; but the people who divided the property before they bought it ran into the same problems the Etzler's are running into today.

Donna Thorton, owns the land in the buffer area, and was disturbed when she received a letter from the Planning Office notifying her of the zoning district. She had never been informed before and found out the Etzler's hadn't been informed either. She had very grave concerns that people were notified who would go along with the zoning, but those who would oppose it were not notified. She thinks targeting the Etzler's is wrong, and not notifying everyone was wrong. She said private meetings were held and finds the zoning district very troubling. She doesn't think it should be approved.

Jim Etzler, 1600 Whalebone Drive, is the largest land owner in the proposed zoning district and he was never notified. The only notice he received was from the Planning Office. The zoning district already has five subdivisions with very narrow roads, steep grades, and sharp switchbacks. He said 72% of the parcels are in subdivisions and have CC&R's. He thinks R1 zoning would be ridiculous because the majority of the parcels can't be

subdivided anyways. His property is perfect for higher density development and there are condos both north and south of his property. His property is not best suited for R1 zoning and if the zoning is approved he will lose 70% of his property value. He said none of the neighbors have asked to purchase his property but they want to control it. He wants to know where his property rights are and why the value of his property isn't being preserved. He requested the proposed R1 zoning be denied, but if not denied to at least exclude his property from it.

Laura Prim, said she is against the proposed R1 zoning because it takes away the Etzler's property rights. She thinks if somebody wants to control the property they should buy it. She said the Etzler's land is prime development with a good access. She discussed property rights and freedom. A wise person once said I love the property I live on, it's beautiful and I don't want it to change, therefore I will buy all the property around it.

Ron Sletter had listened to everyone and thinks people should have better ethics. He wanted to know why everyone wasn't notified and asked why everyone had to sneak around. He said the country is losing their ethics.

Russ Crowder, American Dream Montana, knows the Commissioners will approve this zoning. He said it's a tact plan and that is what the future of planning is in Flathead County has come to. The Planning Board is expected to be a real part of whole process and represent the Commissioners. He recommends the Etzler's property be removed from the zoning proposal.

Sara Etzler read the definition of property. She said the Etzler's are losing their property rights. She witnessed how the applicants handled the application. Osprey Ridge has all the things needed to be developed. She has lived in the Valley her whole life and realizes the town is growing. She requested the Board deny the application for R1 zoning.

Jerry Oneil, 985 Walsh Road, said one of the reasons he came to speak was because even if this zoning would apply to everyone equally he still wouldn't like it but it would at least abide by the law. He said 50% of the people in the zoning district don't qualify for the driveways and trees they have. He said it is wrong to deprive somebody of their property rights because some people don't want others to enjoy Flathead Lake. He requested the Etzler's property be taken out of the zoning district.

Mayre Flowers, Citizens for a Better Flathead, came to speak in favor of the zoning district. She reminded the Board of the criteria for reviewing requests. She said the applicants want to have a predictable future for the area. She said the 19 acre parcel would still be allowed 38 units, and that's almost doubling the size of density in a rural zoning district. She said giving notice to the public is always an issue that comes up as a problem. She said the new subdivision regulations will require signage on the property when a proposal is going before Board.

Sherry Wehma, 590 Spring Creek Road, supports R1 zoning. She would like to have Etzler's property included so they would have to adhere to some sort of zoning. The highway the property sits on is dangerous and there have been a lot of accidents on the road. She apologized that the Etzler's were not contacted, but she just wants some kind of zoning for the area.

Jim Bartlett said in the beginning of July, 2007 the attorney's office decided unzoned areas would require a certificate of compliance from the Planning Office, but state statute doesn't authorize that. He said if the zoning is approved for the Etzler's property then it will go to the attorney general for his opinion. He said there is a disagreement among counties because state statutes says if condos are unzoned they are exempt from review. He discussed law suites and the disagreements between counties. He said target and spot zoning is wrong.

Jim Chilton, 255 West Ridge Drive, has a bunch of neighbors in favor of the neighborhood staying residential and not turning into condos.

**STAFF  
REBUTTAL**

Holland said the adjoining land owner's list was sent out on May 25<sup>th</sup>.

**APPLICANT  
REBUTTAL**

Sullivan said when this project was started he told the applicant to follow the rules, participate and have faith. He is very familiar with the rules and statutes in Montana for the zoning procedures and each and every one of the mandatory procedures have been followed. He thinks staff did a good job on their report. The statutes say when it comes to zoning decisions the fundamental lynchpin is the Planning Board. He said the applicant is in full compliance with the rules and regulations and their bigger concern is the Flathead Valley. The applicants worked with the Growth Policy to come up with the exact density. He said Osprey Ridge had received their sufficiency letter so the applicant believed the project was still ongoing and they don't know why

the Etzler's withdrew their application. He said the applicant's proposal is entirely legal and they have done everything that they have been asked to do.

**BOARD  
DISCUSSION**

Cross asked Horowitz about the existing condo application.

Horowitz said they took the properties for the zoning district off of the roads and thought the zoning wouldn't apply to the Etzler's because of the condo application.

Holland said the Osprey Ridge condo file never reached sufficiency.

Hines asked Harris to clarify the procedures for withdrawing Etzler's property.

Harris said the first thing needed is an application. Once the application is received the Planning Board holds a public hearing and forwards a recommendation to the Commissioners. The commissioners are obligated to hold a public hearing and then take final action. After that it goes through a 30 day comment period and then the district is created.

Hines asked what the 40% threshold was.

Harris said if 40% of the free holders within the district are opposed then the Commissioners can't approve it.

Cross asked if the Board had the authority to recommend a boundary revision.

Harris said the Board can have discretion to adjust the boundaries if they feel the need.

**MOTION TO  
ADOPT ZONE  
CHANGE FOF**

Robertson made a motion seconded by DeKort to adopt Staff Report FZD 07-01 as findings of fact.

**ROLL CALL FOF**

On a roll call vote the motion passed unanimously.

**MOTION TO  
APPROVE**

Robertson made a motion seconded by DeKort to recommend approval of FZD-07-01 as amended to the County Commissioners.

**BOARD  
DISCUSSION**

Fleming said there have been attempts to get very dense development in rural areas. People from Juniper Bay coming to

talk showed that people in the area are concerned about density in general, not just their own property. She said there are too many people to have a hay day with the land and do what they want to do. She moved into a place zoned so she wouldn't have to be faced with unzoned property issues. She said the district would be contiguous to other zoning around the area. She doesn't agree that the district is spot zoning because it is contiguous with other zoning in the area.

Robertson said Somers is going to have their neighborhood plan soon and Juniper Bay received their interim zoning. The district should be included in an overall plan for the area around the lake. She said when neighbors decide they want to get together there is no legal obligation to include everyone. She said the Etzler's could still create 38 units within the zoning district.

DeKort agreed with Robertson and Fleming and said the problem is unzoned areas and property rights. If the property is bought unzoned it had to be known it will eventually be zoned.

Hines said he is entertained by the whole process because the applicant waited 8 years to request zoning. The applicants were forewarned and knew developments were coming. The Etzler's have the nicest lot along the lake and he wants to see it developed properly. He approves of the zoning but not of the process to get it done.

Cross is in favor of the zoning. He said R1 is not a rural zone but the property would be much different looking if it was built out to the capacity of R1 zoning. He is particularly troubled with what happened with the Etzler's property and thinks the applicant should have discussed the zoning with the Etzler's since it effects them.

**MOTION TO  
REMOVE  
ETLZER**

Cross made a motion to remove the Etzler's property from the zoning district.

Motion withdrawn from lack of second.

**BOARD  
DISCUSSION**

Hines asked what the status of the antique shop was.

Holland said it is a commercial enterprise

Holland said Karen Negluhes wrote her a letter stating what she can and can not do with the antique shop.

**ROLL CALL TO  
ADOPT ZONE  
CHANGE**

On a roll call vote the motion passed unanimously.

**PRELIMINARY  
PLAT/SCENIC  
TRACTS  
FPP-07-17**

A request by Three Mile Development, for Preliminary Plat approval of the Amended Plat of Lot 5, Block 2, Scenic Tracts, a 7 lot single-family residential subdivision on 4.786 acres. Lots in the proposed subdivision are within the Evergreen Water and Sewer District. Those utilities would be extended into the subdivision at the developers expense to serve the lots in accordance with the specifications of the District and State requirements. The property is located west of Highway 2, north of West Reserve Drive on the west side of Scenic Drive.

**STAFF REPORT**

Eric Giles reviewed Staff Report FPP 07-17 for the Board.

**BOARD  
QUESTIONS**

Fleming asked how two houses got on one lot.

Giles said they might have been there before zoning was in place.

Fleming asked how far it was to the city limits.

Giles said a little less then a mile.

Cross asked if one person owned both houses.

Giles said to ask the applicant.

Cross asked about sewer hook ups and how it complied with condition16.

Giles said condition16 is to develop it to an urban standard.

DeKort asked if there was a condition for a bike path.

Giles said a 15 foot bike path would be appropriate.

Robertson asked about paving all the internal roads.

Giles said any internal subdivision road would have to be paved.

Hines asked how long urban standards have been requested.

Johna Morrison said a couple of years.

Hines asked why urban standards couldn't be adopted by city of Kalispell.

Giles said it would require an inter-local agreement.

**APPLICANT**

Narda Wilson, representing the applicant, said the property is in the middle of Evergreen. She showed where the Evergreen Water and Sewer districts ended. She said the two existing houses on the site will remain there and both of the homes are currently served by Evergreen Water and Sewer. On the proposed Lot 1 there is a deed of trust for 1 acre and the other home is a rental. She said there are essentially five additional lots being created on five acres. She was surprised the Staff Report referenced the Kalispell Growth Policy. She said R2 zoning with ½ acre minimum lot size is not an urban density. She discussed urban density and the Kalispell Growth Policy. Under the Growth Policy compliance it promotes the development of single and multi family housing. The Growth Policy directs the County to adopt their own urban standards that can be applied to developments that are urban. Subsection D of the Staff Report strongly encourages but doesn't require sidewalks for duplex or higher density. She said there is no urban development in the area, but if the Board thinks it's appropriate to require an urban standard it would be appropriate to allow an urban density. She agreed with the Staff Report and doesn't have any problems with conditions of approval as long as urban density is anticipated.

Hines asked about the 12 inch water main.

Wilson said they need a 12 inch water main and it will come from the west.

Robertson asked if Scenic Tracts West had curb gutter lights.

Wilson said no.

Cross asked how two houses got on one lot.

Wilson said it was before zoning.

**AGENCIES**

None.

**PUBLIC  
COMMENT**

Terry Benton said the second house on lot 7 just moved in 2 years ago. He said Scenic Drive has turned into a very poor road. The City inspector lives on Scenic Drive and has pointed out numerous problems with the road. He is mainly concerned with



density and traffic. He said getting on and off Reserve Drive is hard to do because there is no light. He owns an acre and thinks increasing the density is a problem. He hoped there would be some CC&R's in place. He is not opposed to the size of the homes; he is just concerned about roads, sewer and safety.

Kay Marsh said the acre is hers but the rest of it is sold. It's a nice area and she would like to see her application go through. She said the roads do need work. She asked the Board if they could put the one acre of their property back into their name.

Gordon Best said there was no illegal sewer tap and supports the subdivision.

**STAFF  
REBUTTAL**

Giles said deeding the lot out of the subdivision could not happen.

**APPLICANT  
REBUTTAL**

Wilson said the additional dwelling is on the tract is because of a deed of trust and if they proposed phasing the one acre could be deeded out of the preliminary plat.

Cross where the existing driveways are.

Wilson showed on the map.

Robertson asked if the people have a gravel driveway if it has to be paved.

Wilson said no.

**MOTION TO  
ADOPT F.O.F.**

Fleming made a motion seconded by Hines to adopt Staff Report FPP 07-17 as findings of fact.

**BOARD  
DISCUSSION**

Fleming didn't like the urban nature of the report because it looks like a residential neighborhood close to town. She agreed with applicant that it is not a urban density subdivision and not a spot the city would annex.

**MOTION TO  
STRIKE F.O.F.  
1**

Fleming made motion seconded by Robertson to strike Finding of Fact 1: *Due to the evidence provided in the "Compliance with the Flathead County Growth Policy section of this report, the proposal does not comply with Policies 23.9, 23.12, and 40.5 of the Flathead County Growth Policy. However, this finding can be mitigated through the imposition of unique condition #16.*

**ROLL CALL TO  
STRIKE F.O.F.  
1**

On a roll call vote the motion passed unanimously.

**MOTION TO  
ADD F.O.F. 7**

Fleming made a motion seconded by Robertson to add F.O.F. 7 to state: *Two existing homes are currently hooked up to the Evergreen Water and Sewer District.*

The motion was withdrawn.

**MOTION TO  
ADD F.O.F. 6**

Fleming made a motion seconded by DeKort to add F.O.F. 6 to state: *Due to the evidence presented in the "Impacts on Local Services" section of this report, the impacts to local services are expected to be minimal. Standard conditions #s 1-12 and unique conditions # 17 mitigate this finding.*

**ROLL CALL TO  
ADD F.O.F. 6**

On a roll call vote the motion passed unanimously.

**MOTION TO  
ADD F.O.F. 7**

Cross made a motion seconded by Fleming to add Finding of Fact 7 to state: *Existing houses are connected to the Evergreen sewage system by means of a line connecting the individual septic tanks to a public sewer.*

**ROLL CALL TO  
ADD F.O.F. 7**

On a roll call vote the motion passed unanimously.

**MOTION TO  
APPROVE**

DeKort made a motion seconded by Fleming to recommend approval of FPP 07-17 as amended to the County Commissioners.

**MOTION TO  
STRIKE  
CONDITION 2**

Robertson made a motion seconded by Fleming to strike condition 2.

**ROLL CALL TO  
STRIKE  
CONDITION 2**

On a roll call vote the motion passed unanimously.

**MOTION TO  
AMEND  
CONDITION 16**

Robertson made a motion seconded by Hines to amend condition 16 to state: *The private, internal subdivision road will consist of a 60-foot right-of-way, minimum 20-foot driving surface, and a 55-foot radius cul-de-sac and be designed and certified by a licensed, professional engineer. [Section 3.9, Flathead County Subdivision Regulations]*

<b>ROLL CALL TO AMEND CONDITION 16</b>	On a roll call vote the motion passed 4-1 with Hines dissenting.
<b>MOTION TO ADD CONDTION</b>	DeKort made a motion seconded by Robertson to add the condition: <i>The applicant will dedicate a 15-foot bicycle/pedestrian easement on Lots 1 and 7 along the Scenic Drive road frontage. [Section 3.18(A), FCSR]</i>
<b>ROLL CALL TO ADD CONDITION</b>	On a roll call vote the motion passed unanimously.
<b>MOTION TO ADD CONDITION</b>	Fleming made a motion seconded by DeKort to add condition to state: <i>All lots in the subdivision shall have access off the internal subdivision road.</i>
<b>ROLL CALL TO ADD CONDITION</b>	On a roll call vote the motion passed unanimously.
<b>MOTION TO AMEND CONDITION 16</b>	Hines made a motion seconded by DeKort to amend condition 16 to state: <i>The private, internal subdivision road will consist of a 60-foot right-of-way, minimum 24-foot driving surface, and a 55-foot radius cul-de-sac and be designed and certified by a licensed, professional engineer. [Section 3.9, Flathead County Subdivision Regulations]</i>
<b>ROLL CALL TO AMEND CONDITION 16</b>	On a roll call vote the motion passed unanimously.
<b>ROLL CALL TO APPROVE</b>	On a roll call vote the motion passed unanimously.
<b>PLANNED UNIT DEVELOPMENT /TREE FARM AT WHITEFISH FPUD-07-01</b>	A request by Dana Bowdish on behalf of Bowdish Family Trust, for Preliminary Plat approval of The Tree Farm at Whitefish, a sixty lot mixed-use (forty-one single-family, sixteen townhomes and 3 commercial) Major Subdivision and Planned Unit Development on 155.94 acres. The subdivision is proposed in six phases over a period of ten years, with each phase being a stand alone unit capable of functioning alone if future phases do not occur. Lots in the subdivision are proposed to have public water and sewer systems. The property is located off of Highway 93 South, north of KM Ranch Road.

**STAFF REPORT** BJ Grieve reviewed Staff Report FPUD 07-01 for the Board.

**BOARD QUESTIONS** Cross asked if the open space was divided with 30 acres for the homeowner's association and 70 acres for the family trust. He asked which was which.

Grieve said it is a good question for the applicant.

Robertson said 70 acres is the tree farm and 30 acres is open space.

Grieve said the US Department of Agriculture has come into an agreement to farm 70 acres of trees. The 30 acres is for the enjoyment and use of the homeowner's association.

**APPLICANT** Johna Morrison, APEC, technical representative for applicant, said this project has been a two year process. Everything has been thought of down to the very last thing. It is going to be a 156 acre subdivision, but only 57 acres of it is going to be developed into homes and infrastructure. The applicant tried to create buffers from neighbors with the idea that homes will not be seen from the road. The developer intends to farm trees and has a very rigorous forest plan. The extensive CC&R's address the architectural standard. Extreme care was put into every single lot and the applicant will use new water conservation techniques. The basic idea is to shrink down lawn levels to conserve how much water is used. The applicant will use xeriscaping and that saves water over the years although water doesn't seem to be a problem in the area. The applicant plans on installing a public water system and if the home owners want to create a pond it is possible. She thanked BJ for his hard work on the project.

Robertson asked if Morrison had read the letter from the public.

Morrison said Jerry Kent has a new idea every week for developing his property. She said they have buffered themselves from his property.

Cross asked about the extension of Bowdish Road.

Morrison said the road will be fairly steep, but the steepest part would be the curve.

Dana Bowdish, Seattle, addressed the 70/30 acre split of open space. He is in a contract with the United States Department of

Agriculture for the thinning of trees. The 70 acres under contract is the southern region of the property adjacent to KM Ranch Road. The remaining thirty acres of open space would be spread around. He wanted to retain ownership of thirty acres to make sure the land retains its integrity, but he will grant easements for use of the land. There are some legitimate things people are worried about. He will promote xeriscaping and limit the amount of turf people can have. He said the commercial lots will be very small.

Cross asked about the community center.

Bowdish said if he commits to build it then he has to build, but he want to find out if people who are buying lots even want one.

**AGENICES**

None.

**PUBLIC  
COMMENT**

Ed Slesenger, handed out a letter to the Board. He said there will be an airport going over the Tree Farm at Whitefish. He has heard a lot about density. His land is 1 house on 10 acres, but this development is proposing 20 units on 40 acres. He is developing a pond in the area and is concerned about liability for kids and has traffic concerns. He said there could be some potential issues with the water.

**STAFF  
REBUTTAL**

None.

**APPLICANT  
REBUTTAL**

Morrison said when the water well tests are done and if they find the neighbors aquifer going down the applicant will fix the problem.

**BOARD  
DISCUSSION**

Fleming doesn't care for the commercial lots in the PUD. She thinks they should keep commercial lots out of the corridor. She liked the phasing plan.

Robertson asked who was contacted about the development.

Grieve said everyone with 150 feet of the property line.

Robertson knows people in Happy Valley that have had some serious water problems.

Hines said there is an issue with water in North Happy Valley, but doesn't think it effects this area.

Cross had a problem with the open space because the PUD is getting double the density, but retaining ownership of open space. He said the applicant needs to give and take with a PUD.

Robertson would like to see the commercial lots gone.

**MOTION TO  
ADOPT FPUD  
07-01**

Fleming made a motion seconded by Hines to adopt FPUD 07-01 as amended.

**MOTION TO  
STRIKE  
COMMERCIAL**

Fleming made a motion seconded by Robertson to *strike commercial uses* as a permitted use on lots 58-60.

**ROLL CALL TO  
STRIKE  
COMMERCIAL**

On a roll call vote the motion passed 3-2 with Hines and Cross dissenting.

**MOTION TO  
AMEND  
CONDITION 6**

Cross made a motion seconded by Robertson to amend condition 6 to state: *100.56 acres of open space be preserved under the terms and conditions outlined herein for a minimum of 30 years after the date of final approval or until such time as the CC&R's expire. After expiration of the 30 years, the open space may be utilized in the following manner-*

- a. Maintained with continued status as a tree farm with ownership by Bowdish Family Trust and continuation of the terms and conditions outlined herein for a period of time to be determined by the Bowdish Family Trust. If the Bowdish Family Trust decides to sell the open space at any time, offers of sale of the 100.56 acres of open space must be made in the order below.*
- b. The land be donated to a public conservation organization or land trust.*
- c. Offered for purchase at 50% of fair market value to the Tree Farm at Whitefish Homeowner's Association for continued status as a tree farm or homeowner's park. The reduced price is fair and reasonable due to the assumption that lot purchasers had at the time of purchase that the open space would be a lasting amenity. The HOA must then retain ownership of the open space for a minimum of 30 years. If after 30 years the HOA would like to sell the 100.56 acres of open space, they must offer it in the order below.*
- d. Offered for purchase at fair market value to the nearest municipality at the time as part of an urban*

- forestry preserve or park.*
- e. Offered for purchase at fair market value to Flathead County as a regional passive park similar to Lone Pine State Park.*
  - f. Offered on the open market for development.*

<b>ROLL CALL TO AMEND CONDITION 6</b>	On a roll call vote the motion passed unanimously.
<b>MOTION TO TABLE REQUEST</b>	Hines made a motion seconded by Robertson to table the request until the next scheduled meeting.
<b>BOARD DISCUSSION</b>	Fleming said she will not be there next week.  Grieve said he would not be there next week.
<b>ROLL CALL TO TABLE REQUEST</b>	On a roll call vote the motion failed 2-3 with Fleming, Cross and DeKort dissenting.
<b>MOTION TO NOT ALLOW OFF STREET PARKING</b>	Robertson made a motion seconded by Fleming to: <i>not allow any off street parking.</i>
<b>ROLL CALL TO NOT ALLOW OFF STREET PARKING</b>	On a roll call vote the motion passed unanimously.
<b>ROLL CALL TO APPROVE FPUD 07-01</b>	On a roll call vote the motion passed unanimously.
<b>MOTION TO ADOPT FPP 07-15 AS FINDINGS OF FACT</b>	Fleming made a motion seconded by DeKort to adopt FPP 07-15 as findings of fact.
<b>MOTION TO AMEND F.O.F. 5</b>	Fleming made a motion seconded by DeKort to amend finding of fact five to state: <i>The potential for interaction with dangerous existing wildlife is great. This is a wildlife corridor. Wildlife that frequent the area will have substantial habitat preserved as part of the open space . The impacts can be mitigated by condition.</i>
<b>ROLL CALL TO AMEND F.O.F. 5</b>	On a roll call vote the motion passed unanimously.
<b>MOTION TO APPROVE</b>	Fleming made a motion seconded by Robertson to recommend approval of FPP 07-15 as amended to the County



Commissioners.

**MOTION TO  
ADD TO FACE  
OF PLAT**

Hines made a motion seconded by DeKort to add H-Q to the face of the plat. *Amendment to Section E of staff report FPP 07-15: Interaction with potentially dangerous wildlife is likely in this area due to low density properties along KM Ranch Road acting as a wildlife corridor that terminates on the subject property. Tom Litchfield of Montana Fish, Wildlife and Parks submitted comments expressing concern with the number of interactions in the vicinity of the proposed subdivision. Multiple interactions with bear and mountain lion have been reported in the subject area in recent years. A series of statements to appear on the final plat will mitigate the concerns of human/wildlife interactions.*

*h) Homeowners must be aware of the potential for vegetation damage by wildlife, particularly from deer feeding on green lawns, gardens, flowers, ornamental shrubs, and trees in this subdivision. Homeowners should be prepared to take the responsibility to plant nonpalatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Landscape plantings of certain species of native vegetation is less likely to suffer extensive feeding damage by deer.*

*i) Gardens, fruit trees, or orchards attract wildlife such as bear and deer. Fruit-bearing trees and shrubs are discouraged in this subdivision because they can regularly attract bears in the late summer/fall. If planted, fruit producing trees and shrubs will be fenced utilizing electric fencing to deter bears. Keep produce and any fruit, such as strawberries, picked and off the ground. Ripe or rotting fruit or vegetable material can attract bears, deer, skunks, and other wildlife. To help keep wildlife such as deer out of gardens, fences should be 8 feet or taller or electric fences utilized.*

*j) Garbage must be stored either in secure, bear-resistant containers or indoors to avoid attracting wildlife such as bears. If stored indoors, garbage cans may not be set out until the morning of garbage pickup and must be brought in no later than that same evening. Commercial lots shall use bear-resistant dumpsters if needs cannot be serviced by household-sized containers. If sites are occupied seasonally or if the occupants are to be away from the household for 7 days or more, garbage from the home, other buildings, or*

containers must be removed from the property prior to their departure.

k) Do not feed wildlife or offer supplements (such as salt or mineral blocks), attractants, or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that can lead to overuse of vegetation, disease transmission, and other adverse effects to wildlife (such as foundering of deer). Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against state law (MCA 87-3-130) to purposely or knowingly attract bears with supplemental food attractants (any food, garbage, or other attractant for game animals) or to provide supplemental feed attractants in a manner that results in "an artificial concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety." Also, homeowners must be aware that deer might attract mountain lions to the area.

l) Birdseed is an attractant to bears and deer. Use of bird feeders is not recommended from April 1 through November 30. If used, bird feeders must: a) be suspended a minimum of 10 feet above ground level (measured from bottom of catch plate), b) be at least 4 feet from any support poles or points, and c) be designed with a catch plate located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds. Hummingbird feeders will follow the same criteria.

m) Pets must be confined to the house, in a fenced yard, or in an outdoor kennel area when not under the immediate control of the owner, and not allowed to roam, as they can chase and kill big game and small birds and mammals. Under current state law it is illegal for dogs to chase hooved game animals, and the owner may also be held accountable (MCA 87-3-124). Keeping pets confined also helps protect them from predatory wildlife.

n) Pet food must be stored indoors, in closed sheds, or in bear-resistant containers in order to avoid attracting wildlife such as bears, mountain lions, skunks, and other wildlife. When feeding pets, do not leave food out overnight. Pets must be fed indoors or inside kennels so that wild animals do not learn to associate food with your home.

*o) Barbecue grills must be stored indoors, and permanent outdoor barbecue grills shall not be allowed in this subdivision. Keep all portions of the barbecues routinely clean. Food spills and smells on and near the grill can attract bears and other wildlife.*

*p) Compost piles and beehives can attract bears and should be fenced to prevent access to them or not allowed in the subdivision.*

*q) Types of pets were not addressed in the EA. Domestic animals such as horses, cattle, pigs, sheep, goats, llama, poultry, etc. (including those kept as 4H projects) can attract bears, mountain lions, and coyotes. Animals should be housed with this in mind and livestock feeds, especially grain related, should be fed in a manner that does not allow deer or bears to have access to them.*

**ROLL CALL TO  
ADD TO PLAT**

On a roll call vote the motion passed 4-1 with Cross dissenting.

**MOTION TO  
AMEND  
CONDITION 3**

Robertson made a motion seconded by Fleming to amend condition 3 to state: *That the intersection of Bowdish Road and US Highway 93 shall comply with Section 3.9(I)(6) in the Flathead County Subdivision Regulations.*

**ROLL CALL TO  
AMEND  
CONDITION 3**

On a roll call vote the motion passed unanimously.

**MOTION TO  
AMEND  
CONDITION 12**

DeKort made a motion seconded by Hines to amend condition 12 to state: *A 15-foot bicycle and pedestrian easement shall be established on the property along Bowdish Road, or a 5-foot bicycle/pedestrian lane shall be added to the 20-foot paved surface of Bowdish Road (making a 25-foot wide road). Also a 15-foot bicycle and pedestrian easement shall be established along KM Ranch Road and US Highway 93 North.*  
*tion 12 to state: A 15-foot bicycle and pedestrian easement shall be established on the property along Bowdish Road, or a 5-foot bicycle/pedestrian lane shall be added to the 20-foot paved surface of Bowdish Road (making a 25-foot wide road). Also a 15-foot bicycle and pedestrian easement shall be established along KM Ranch Road and US Highway 93 North.*

**ROLL CALL TO  
AMEND  
CONDITION 12**

On a roll call vote the motion passed unanimously.

**MOTION TO  
AMEND  
CONDITION 7**

Robertson made a motion seconded by Hines to amend condition 7 to state: *That the applicant shall apply for and receive approach permits for access onto KM Ranch Road and US Highway 93 North.*

**ROLL CALL TO  
AMEND  
CONDITION 7**

On a roll call vote the motion passed unanimously.

**MOTION TO  
AMEND  
CONDITION 6**

Fleming made a motion seconded by Cross to amend condition 6 to state: *The proposed community water and level II septic treatment systems for the subdivision shall be reviewed by the Flathead City-County Health Department and approved by the Montana Department of Environmental Quality. [Section 3.14(A) and 3.15(A), FCSR]*

**ROLL CALL TO AMEND CONDITION 6** On a roll call vote the motion passed unanimously.

**ROLL CALL TO APPROVE** On a roll call vote the motion passed unanimously.

**OLD BUSINESS** None.

**NEW BUSINESS** Hines said he will not be attending any more of the Kalispell Planning meetings or the Long Range Task force meetings.

**ADJOURNMENT** The meeting was adjourned at approximately 1:00 a.m. on a motion by DeKort seconded by Robertson. The next meeting will be held at 6:00 p.m. on June 27, 2007.

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Gene Dziza, President

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Kayla Kile, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 8/8/07